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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

Master File No. 15-cv-04883-BLF

In re EXTREME NETWORKS, INC.
SECURITIES LITIGATION,

This Document Relates to:
All Actions.

**LEAD PLAINTIFF'S MEMORANDUM
OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION
TO DISMISS THE AMENDED
CONSOLIDATED CLASS ACTION
COMPLAINT**

CLASS ACTION

Date: December 14, 2017
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Courtroom: 3, 5th Floor

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1 Lead Plaintiff Arkansas Teacher Retirement System (“Plaintiff”) respectfully submits this
 2 memorandum in opposition to the motion to dismiss the Amended Complaint¹ (ECF No. 107,
 3 “MTD”) filed by Defendants Extreme Networks, Inc. (“Extreme” or the “Company”), Charles
 4 Berger, John Kurtzweil and Kenneth Arola (collectively, “Defendants”).

5 **I. INTRODUCTION**

6 **A. The AC Pleads New Allegations that Preclude Dismissal**

7 In response to the Court’s Order Granting Defendants’ Motion to Dismiss (ECF No. 102,
 8 the “Order”), the AC focuses on statements the Order indicated were actionable, adding factual
 9 detail to explain how they were deliberately false or misleading. For example, it details how, at
 10 Extreme’s internal global sales conference in Las Vegas, CW3 was present when members of the
 11 salesforce questioned Berger about the lack of an integration plan, and Berger responded – a year
 12 into the Class Period – that the plan was still “to be determined” or “TBD.” ¶104. So Defendants
 13 pivot, moving to dismiss on the grounds that Extreme supposedly disclosed everything.

14 But Defendants’ so-called disclosures did more than project a permissible amount of
 15 corporate optimism (MTD at 22). They knew they had no plan to integrate, but told investors
 16 there was a plan. AC App’x A at 1. They knew they had “zero visibility” into Lenovo’s ability to
 17 contribute revenue (¶154), but told investors it would increase revenue over 10%, by June 2015.
 18 ¶322. The strongest inference is that Defendants recklessly or intentionally misled investors.

19 **Integration: First**, in response to the Court’s questions at oral argument (Pls. Ex. 1 at
 20 22:19-25, 39:1-19), the AC defines an integration plan as one that *ex ante*: (1) combines
 21 salesforces based on objective criteria; (2) identifies how to cut costs and achieve synergies; (3)
 22 has a “product roadmap” as to how (and when) the two companies’ separate products would
 23 combine; and (4) includes a “go-to-market” (“GTM”) strategy as to how the Company would
 24 reach customers and provide competitive products. ¶13. **Second**, the AC adds new details from
 25 CWs 1 and 3, including their direct interactions with Berger about the lack of an integration plan.
 26 ¶¶102-105, 110, 112-113, 122, 126. **Third**, it explains how the CWs knew that Extreme lacked

27
 28 ¹References to the Amended Complaint (ECF No. 105, “AC,”) are denoted as “¶____.”

such a plan, in addition to what they heard from Berger. *E.g.*, ¶102; *cf.* Order at 27. **Fourth**, it provides additional facts regarding the salesforce integration problems through 2015. *E.g.*, ¶144 (CW3 heard new CRO Jeff White’s report of “many things wrong” on early 2015 sales call).

Berger’s Key Admissions. The AC adds allegations that Berger admitted:

- There was still no integration plan as of 7/31/14, telling CW3 and the rest of the salesforce the plans were still “**TBD**” (¶¶104, 110);²
- The integration was only “nearly completed” as of 10/15/14 (¶142), after telling investors it was “complete” on 8/14/14 (*see* ¶235);
- “[W]e still have considerable work to do” integrating as of 1/28/15 (¶143), after investors *again* were told it was “complete” on 12/17/14 (*see* ¶291).

Post-Class-Period Admissions. Further, the AC adds allegations that:

- Extreme announced on 5/20–5/21/15, just 6 weeks after the Class Period, a “*new* operating plan” to achieve synergies and a “*new* solutions-based *go-to-market strategy*,” which Extreme only started to develop in January 2015 (¶¶155-157);
- Berger’s replacement, Ed Meyercord – who was Chairman of Extreme’s Board during the entire Class Period – admitted on 9/14/16 that the Enterasys deal lacked “*integration planning*” and thus suffered from “*a lot of integration issues*” (¶¶14, 160).

Berger’s Bonus Plan: In response to the Order at 40, the AC contains new allegations detailing how unusual Berger’s stock price-based bonus was. First, it provides “comparisons to prior incentive schemes” to show that no preceding CEO had such a bonus. ¶¶374-78. Second, it adds expert testimony that his bonus was highly unusual: for example, *none* of Extreme’s 2013 peer companies had such a plan. ¶¶384(b), 386; *see also* ¶¶387-92. Defendants’ argument that such motive allegations are insufficient because Berger did not exercise his 900,000 options (MTD at 24) is contrary to controlling Ninth Circuit law. Their assertion that his options expired is contradicted by the AC (¶401) and public filings (Pls. Ex. 2 (listing “Expiration Date” for Berger’s options from this bonus as “5/2/2020”)), and is improper on a motion to dismiss.

Lenovo: The AC alleges only four misstatements about the Lenovo alliance. App’x A at 4-5. The first misstatement, by Berger on 10/28/14, that “Lenovo *certainly* by then [June 2015]

²Unless otherwise noted, all emphasis is added and internal brackets, citations, or quotes omitted.

we believe will have double-digit revenue impact” (§322), is an actionable statement of “surety” (Order at 24); it is contradicted by Meyercord’s admission, just two weeks after the Class Period, that Extreme had “zero visibility” into Lenovo’s ability to drive revenues. The other three statements are specific representations of current or historical fact regarding Extreme’s sales personnel “having airtime,” “sitting side-by-side” with and “train[ing]” Lenovo representatives on Extreme’s products. §§307, 317, 330. They are contradicted by Meyercord’s admission that Extreme did not know “whether or not we’re collaborating in the field.” §154. This is also corroborated by CW4’s account that there was no such “field level” activity early in the Class Period. §149.

10% Revenue and Margin “Commitment:” The AC kept only three “commitment” statements (App’x A at 5-6), which Plaintiff believes are sufficiently definitive and specific to be actionable because they set a specific number (10%) by a specific time (June 2015). They are also material when viewed in context, as required under Ninth Circuit law.

B. Defendants’ Arguments Against Falsity and Scienter Fail

Defendants rely on an improper, summary judgment-style evidentiary attack, seeking judicial notice of disputed factual matters in 26 exhibits. They deploy these disputed facts to challenge falsity and scienter with three main arguments: (1) the AC pleads mere “mismanagement” (MTD at 1); (2) Defendants were entitled to be “optimistic” (*id.* at 20-21); and (3) they disclosed enough not to deceive investors (*id.* at 1, 3). They are wrong on all counts.

Mismanagement: The parties agree that Defendants mismanaged the integration, but that is not the basis of Plaintiff’s case. Instead, the AC alleges that rather than truthfully disclosing that their lack of an integration plan caused worse-than-expected problems, Defendants knowingly, or at least recklessly, misrepresented and concealed it. *See Reese v. Malone*, 747 F.3d 557, 581 (9th Cir. 2014) (reversing dismissal because, though defendants’ “actions exemplify corporate mismanagement,” the complaint pled a Section 10(b) claim where they were “at the very least, deliberately reckless as to the false or misleading nature of their public statements”), *overruled on other grounds by City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605 (9th Cir. 2017); *see also Novak v. Kasaks*, 216 F.3d 300, 311-12 (2d

1 Cir. 2000) (defendants’ “false reassurances ... or [] false explanations” for problems pled
 2 “conduct actionable under the securities laws,” rather than “matters of business judgment”).
 3 Courts have repeatedly rejected mismanagement arguments in similar integration cases. *E.g.*,
 4 *Better v. YRC Worldwide Inc.*, 2012 WL 4433500, at *7-8 (D. Kan. Sept. 25, 2012) (“defendants
 5 falsely portrayed the integration ... as successful, but [CWs] described it as otherwise” and thus
 6 “*plaintiffs have done more than simply set forth disagreements with management decisions*”);
 7 *In re MobileMedia Sec. Litig.*, 28 F. Supp. 2d 901, 927 (D.N.J. 1998) (same); *In re Premiere*
 8 *Techs., Inc. Sec. Litig.*, 2000 WL 33231639, at *14 (N.D. Ga. Dec. 8, 2000) (same).

9 **Corporate Optimism:** Defendants are allowed a degree of optimism, but cannot mislead
 10 investors. *See In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1143-44 (9th Cir. 2017). Here,
 11 their statements concerned “objectively verifiable matters of *fact*” (Order at 20-21)—that they
 12 were “on track” with or “ahead of” a plan that did not exist. This distinguishes *Align*, which
 13 involved only *opinion* statements about goodwill. MTD at 4, 19, 21.

14 **Disclosures:** This is not a case of full disclosure as Defendants claim. Though they
 15 disclosed “*some*” issues (§§196, 206) they repeatedly omitted and misrepresented material facts,
 16 minimized integration problems, and falsely reassured that the issues were “behind us.” §§258,
 17 279. Further, this argument that public disclosures preclude liability is the affirmative truth-on-
 18 the-market defense, which is highly fact-intensive and rarely granted at this stage. Part III.B.1.d.

19 **II. STATEMENT OF ISSUES (Civil L. R. 7-4(a)(3)) AND LEGAL STANDARDS**

20 **Issues:** Whether the AC adequately pleads that Defendants violated Sections 10(b) and
 21 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder.

22 On a motion to dismiss a §10(b) case, “courts must ... accept all factual allegations in the
 23 complaint as true,” *Tellabs, Inc. v. Makor Issues & Rights Ltd.*, 551 U.S. 308, 322 (2007), and
 24 “construe them in the light most favorable to [plaintiffs].” *Reese v. BP Expl. (Alaska) Inc.*, 643
 25 F.3d 681, 690 (9th Cir. 2011). In analyzing scienter, “the court’s job is not to scrutinize each
 26 allegation in isolation but to assess all the allegations *holistically*.” *Tellabs*, 551 U.S. at 326.

27 Defendants’ attempt to incorporate the Court’s prior Order and cases cited therein (MTD
 28 at 5) violates this Court’s Standing Order Re Civil Cases (at 4:5-9): “All factual *and legal bases*

for a party's position must be [] in the briefs submitted in connection with the [] motion...."

III. ARGUMENT

A. Defendants' Request for Judicial Notice Should Be Denied to the Extent It Seeks to Notice the Truth of the Exhibits' Contents and Disputed Facts

Defendants seek judicial notice of 26 exhibits supposedly only "for the purposes of showing what was disclosed to investors." MTD at 5. (Austin Exs. 6, 9, 12, 16, 20, 22, & 24-27 are not referenced in in the AC.) Plaintiff objects to the extent Defendants seek to notice the *truth* of the exhibits' contents. *U.S. v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (taking judicial notice of reports referred to in complaint for their "existence," but holding "*we may not, on the basis of these reports, draw inferences or take notice of facts that might reasonably be disputed*"); *Lee v. City of Los Angeles*, 250 F.3d 668, 688, 690 (9th Cir. 2001).

Defendants even ask the Court to notice as true their public statements about so-called facts that the AC disputes. For example, they cite hearsay to suggest Extreme had an integration plan. MTD at 2, 9, 10 (statement that Extreme "retained" Deloitte). Such "factual challenges to a [] complaint have no bearing on the legal sufficiency of the allegations under Rule 12(b)(6)." *Lee*, 250 F.3d at 688 (reversing dismissal where "court assumed the existence of facts that favor defendants based on evidence outside plaintiffs' pleadings [and] took judicial notice of the truth of disputed factual matters"). That Plaintiff does not "challenge" these statements does not mean it agrees they are true or accepts factual inferences that may be drawn from them.³ *Vesta Corp. v. Amdocs Mgmt. Ltd.*, 129 F. Supp. 3d 1012, 1021-22 (D. Or. 2015) ("it is clear that Plaintiff *disputes the inferences* that Defendants ask this Court to draw based on those documents").

B. The Complaint Sufficiently Pleads Falsity

A public statement is "materially false or misleading" if it is "inconsistent with" internal information. *Quality Sys.*, 865 F.3d at 1144. Further, "[a] statement or omission is misleading ...

³These also include statements that Defendants (a) put "a great deal of ... effort" into and achieved "savings" from the integration (MTD at 9, citing Austin 5:7)); (b) put "a great deal of ... money" into the integration (MTD at 9, citing Austin Exs. 6, 9, 12, 16, 20, & 24)); (c) attained synergies (MTD 11, citing Austin 11:5); (d) achieved "new customer wins" (MTD at 22, citing Austin 8:4, 10:4, 15: 3); (e) achieved "positive steps in Lenovo" alliance (MTD at 16, citing Austin 11:4, 15:4, 19:3); and (f) that Berger's options from his unusual bonus plan expired unexercised three months after he left Extreme (MTD at 24, citing Austin 1:9, 25:7, 27:48-49).

1 if it would give a reasonable investor the impression of a state of affairs that differs in a material
 2 way from the one that actually exists.” *Reese*, 643 F.3d at 691. “[O]nly if ‘reasonable minds’
 3 could not disagree that the challenged statements were not misleading should the district court
 4 dismiss under 12(b)(6).” *Warshaw v. Xoma Corp.*, 74 F.3d 955, 959 (9th Cir. 1996) (cited with
 5 approval by *Quality Sys.*, 865 F.3d at 1143).

6 **1. Misstatements and Omissions Regarding the Enterasys Integration**

7 **(a) “On Track,” “Ahead of Plan” and Similar “Plan” Statements**

8 Berger, Kurtzweil and Arola repeatedly represented that the integration and related
 9 synergies were “on track,” “ahead of plan,” that they had a “plan” to achieve \$30-40 million of
 10 synergies, and similar assurances. ¶¶165, 180, 185, 187, 209, 213, 218, 227, 240, 245, 250, 267,
 11 274, 284, 296; *see* App’x A at 1-2. The Court previously upheld these statements as not puffery
 12 (Order at 20-21) but held they were not false because Plaintiff had not sufficiently alleged that
 13 the CWs “would have been privy to any [integration] plan” or “demonstrate[d] [the] absence of a
 14 plan.” *Id.* at 26-28. The Court also found that Defendants “disclosed the challenges faced” with
 15 the integration and had no duty to disclose the problems alleged by the CWs. *Id.* at 30. But such
 16 statements created the strong impression that an integration plan existed, and thus were false and
 17 misleading because there was no such plan, as shown by new, particularized statements from
 18 CW1 and CW3 and new allegations detailing the basis of their knowledge.

19 **(i) CWs Show that Extreme Lacked an Integration Plan**

20 Defendants convinced the market they had a “*plan*” to integrate and achieve synergies,
 21 and reassured investors they were “*on track*” or even “*ahead of plan*.” As described below, CWs
 22 1, 2, 3 and 5 all stated that Extreme had no such plan. The AC adds particularity about four
 23 crucial plan components Extreme lacked throughout the Class Period, as noted above. *See* ¶13.

24 **CW1.** CW1 stated that there was no centralized integration plan. ¶96. New allegations
 25 from CW1 elaborate that there was no combined product roadmap, though it was critical to
 26 Extreme’s clients, who wanted to know how and when the Company would combine the
 27 different technologies and whether the resulting products would be compatible with existing
 28 products. ¶¶97-98. Nor was there a plan to combine salesforces, *e.g.*, no “account management”

1 or direction for which salesperson would run which customer accounts and who would be in
 2 leadership positions (¶106), so such decisions were made *ad hoc* rather than according to a plan
 3 with objective criteria (¶107). Further, Extreme’s GTM strategy was “piecemeal” and
 4 incomplete, from the Enterasys acquisition until CW1 left in April 2014. ¶115.

5 **CW3.** CW3 similarly said that there was “no plan” for integration. ¶102. The lack of a
 6 product roadmap created company-wide concern among Extreme’s clients (including roughly
 7 100 of CW3’s customers) about future product lines, resulting in delayed purchases and
 8 substantial revenue losses. ¶105 (salespeople from other regions voiced the same concerns at
 9 internal sales meetings). These new allegations render false Berger’s 9/12/13 statement that
 10 “[t]here will be no disruption in customers’ ability to grow and operate their networks. Period.
 11 None.” ¶170. (This Court previously dismissed this statement, finding “no allegations in the
 12 [prior] Complaint that the integration did in fact disrupt Extreme’s customers’ businesses.” Order
 13 at 29.) Extreme could not tell customers that its products would be supported for their expected
 14 lifetime of 4–7 years (¶97), or when the combined products or updates would become available,
 15 leading customers to forego making purchases throughout the Class Period (¶105), thus
 16 “disrupt[ing] Extreme’s customers’ businesses” (Order at 29). *See Fecht v. Price Co.*, 70 F.3d
 17 1078, 1083 (9th Cir. 1995) (“[A]llegations of specific problems undermining a defendant’s
 18 optimistic claims suffice to explain *how* the claims are false.” (emphasis in original)).

19 CW3 also stated that the lack of a product roadmap was “constantly” discussed internally,
 20 including “all the way up” to Berger at quarterly sales calls (¶¶103-05) and that Extreme lacked a
 21 GTM strategy throughout the Class Period, as Berger stated they were “working on it” at
 22 quarterly sales meetings CW3 attended. ¶¶112-14. Indeed, soon after White joined Extreme on
 23 10/1/14, he acknowledged the lack of a GTM strategy on a global sales call (with Berger and
 24 CW3 present), stating that he was hired to develop it. ¶112. New CW3 statements also confirm
 25 there was no plan for how customer accounts would be reassigned or divided among the two
 26 salesforces, and that such decisions were not made according to a plan. ¶125.

27 CW3 particularly undermined Defendants’ statements that there was a “*plan*” to achieve
 28 synergies (¶¶165, 185, 218), or that such synergies were “*on track*” (¶¶245, 250, 267, 274, 284,

296). According to CW3, management provided no direction for how to attain integration synergies within CW3's purview, including through reduced product costs or supply chain efficiencies. ¶109. There was no product "compatibility" from which synergies could arise, and thus "no incremental value" added by the acquisition from either an earnings or cost-savings perspective—resulting in "zero" discernable synergies. *Id.*

CW2. CW2 said Extreme lacked a combined product roadmap, which caused substantial client concern and resulting losses totaling at least \$90 million. ¶100. Nor did Extreme achieve any synergies from the elimination of employee redundancies during the Class Period. ¶124.⁴

(ii) The AC Adequately Pleads the Basis of the CWs' Knowledge and Reliability

Contrary to Defendants' arguments (MTD at 10), these CWs were in a position to know the above facts. The AC alleges their job titles, duties and dates of employment, which show that they were in a position to know the alleged information. *Quality Sys.*, 865 F.3d at 1144-45. ¶¶95, 99, 101, 111, 129, & 150. Direct involvement in integration planning (MTD at 10) is not required. *See Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 985 (9th Cir. 2008) (employees may well be in position to know facts that impact their jobs); *In re LDK Solar Sec. Litig.*, 584 F. Supp. 2d 1230, 1243 (N.D. Cal. 2008) ("For pleading purposes, it is not necessary that the source have personal firsthand knowledge in a strict evidentiary sense.").

Per the Order (at 27), the AC also alleges new facts supporting the basis of their knowledge. CW1 was one of only 6 or 7 Senior Systems Engineers at Extreme before the acquisition, as well as a "top performer" with access to CEO Berger. ¶¶119-122. In fact, CW1 spoke with Berger specifically about the *ad hoc*, damaging way the salesforces were combined without a plan, which Berger did not deny. ¶¶107, 122. Further, CW1 was on company-wide

⁴Defendants' integration cases (MTD at 21) are distinguishable because they did not allege the lack of an integration plan. *Hensley v. Imprivata, Inc.*, 2017 WL 2178644, at *14-15 (D. Mass. May 16, 2017) (conclusory allegations that integration was "a complete nightmare" insufficient to plead falsity of statement that integration "was 'going on plan, on target'"); *Fadia v. FireEye, Inc.*, 2016 WL 6679806, *6-7 (N.D. Cal. Nov. 14, 2016) ("none of Plaintiffs' allegations or arguments directly address [] statement" about product integration); *In re Tibco Software, Inc. Sec. Litig.*, 2006 WL 1469654, *19, *23-24 (N.D. Cal. May 25, 2006) (CWs "not inconsistent" with statements and were not at company at relevant time or not "personally knowledgeable").

1 sales calls where integration issues were discussed with senior management, including Berger,
 2 but no integration plan was ever mentioned. ¶¶95, 98. CW1 also recalled a January/February
 3 2014 meeting in San Francisco that focused on developing a combined product roadmap, which
 4 “still [had] a lot to be worked out” at that time. ¶98.

5 Likewise, CW3 spoke from personal knowledge as a Territory Sales Manager, who
 6 would have been tasked to implement any integration in his or her territory, where s/he was both
 7 the “field manager” and the “sales engine.” ¶102. At a quarterly sales call shortly after the
 8 acquisition, CW3 heard Berger answer questions about the lack of a plan by saying Extreme was
 9 “*formulating the integration plan*,” confirming it did not have one initially. ¶105. As late as
 10 7/31/14, nine months after the acquisition, CW3 heard Berger state at the annual global sales
 11 conference in Las Vegas that the integration plan was *still “TBD”* (¶104 & n.8), as was any plan
 12 to achieve synergies (¶110). CW3 also attended quarterly sales calls with Berger, where the lack
 13 of a synergies plan was discussed. ¶¶109-110; *see also* ¶39 (Berger was hands-on).

14 CW2 was a senior executive for the entire Class Period,⁵ with access to both Extreme’s
 15 upper management and Board of Directors. ¶99. Moreover, these CWs corroborate each other,
 16 independently confirming the lack of the four components of an integration plan and thus
 17 supporting their reliability. *Hatamian v. Adv. Micro Devices, Inc.*, 87 F. Supp. 3d 1149, 1163
 18 (N.D. Cal. 2015). *See also* ¶111 (CW5 on lack of a plan to integrate personnel after s/he joined in
 19 August 2014). Defendants’ repeated attempts to dispute the CWs’ statements, including by
 20 offering extrinsic facts (MTD at 14, 17) to cast doubt on the truth of their statements, are
 21 improper attacks on their credibility. *Anderson v. Spirit Aerosystems Holdings, Inc.*, 827 F.3d
 22 1229, 1239 (10th Cir. 2016). (“We accept the truth of the witnesses’ accounts as pleaded in the
 23 complaint and do not assess the witnesses’ credibility.”).

24 (iii) Defendants Improperly Challenge these Well-Pled Facts

25 Defendants do not dispute that an integration plan must include the four components

26
 27 ⁵CW2 is described as a “senior executive of Extreme before, during and after the Class Period.”
 28 ¶99. Plaintiff believes this description is sufficient, but can provide CW2’s exact positions and
 employment dates *in camera*. *Id.* & n.7.

1 outlined above. Instead, they challenge whether these elements were really absent, and how
 2 much was disclosed. But such factual disputes are improper at this stage. *Lee*, 250 F.3d at 688.

3 **Salesforce Integration.** The Court found that the prior complaint implied “there was a
 4 plan that involved making significant cuts in personnel.” Order at 27. The allegations have been
 5 clarified to show that Extreme’s attempt to combine the salesforces *ad hoc* resulted in “overlap”
 6 and “redundancies” rather than cuts. *See infra*. Defendants challenge the new allegations by
 7 agreeing there were problems integrating the salesforces, but asserting these problems were
 8 disclosed in 2014. MTD at 14-15. But these disclosures were alleged as partially *corrective* of
 9 earlier misstatements, too late to avoid misleading investors. ¶¶195, 206-207, 424-425. Nor were
 10 such problems typical of any integration (MTD at 14). ¶122 (Berger acknowledging to CW1 that
 11 this integration was “unique” in that personnel were integrated *ad hoc* rather than per a plan).

12 **Synergies.** Defendants argue that reducing headcount was not a significant driver of
 13 synergies. MTD at 12-13. But they ignore their own statements describing the elimination of
 14 redundancies as a key part of achieving the \$30-40 million synergies. ¶165 (Kurtzweil, 9/12/13:
 15 “*When we have fully integrated the two teams*, we plan to reduce product costs and *operating*
 16 *expenses* between \$30 million to \$40 million ... [of] synergies.”); ¶185 (same on 11/5/13);
 17 Austin 19:7 (Arola promising “*some additional cost reductions* with Jeff [White] onboard
 18 now, we’re really focusing on the *sales organization*, to see what we can do to streamline in that
 19 area as well as drive more efficiencies”); Austin 8:6 (“*we have started to make significant*
 20 *[personnel] cuts*... you will see *more of those synergies* in this quarter and certainly next.”).

21 Indeed, analysts understood Defendants’ statements to mean that a substantial part of the
 22 \$30-40 million of synergies would come from headcount reductions. *E.g.*, ¶191 (“management
 23 plans to realize synergies of \$30-\$40 million which we believe will be driven by 200-300bp of
 24 gross margin improvement from improved purchasing scale [*i.e.* about \$1.3 million] *and the*
 25 *remainder through headcount reductions as the combined workforce is right-sized.*”); Pls. Ex.
 26 3 (“Beginning the September quarter (F1Q15), we expect progressive improvement in earnings
 27 from integration *and synergies, starting with sales and marketing consolidation*”). In any event,
 28 Defendants’ extrinsic evidence of achieving synergies (MTD at 11, 22) is improper. Part III.A.

1 created of a successful integration. *Quality Sys.*, 865 F.3d at 1144. *See also Rosenbaum Capital,*
 2 *LLC v. McNulty*, 549 F. Supp. 2d 1185, 1187, 1193 (N.D. Cal. 2008) (statements that “all phases
 3 of the integration process are either *on target or ahead of plan*” were false where “Defendants
 4 knew of the problems with the integration”); *In re Nash Finch Co. Sec. Litig.*, 502 F. Supp. 2d
 5 861, 877, 880-81 (D. Minn. 2007) (statements, *e.g.*, that the “[i]ntegration ... is *proceeding*
 6 *according to plan*,” were false given CWs “recount[ing] numerous problems ... that caused ...
 7 the integration process to not proceed smoothly”).

8 (v) **Later Admissions Confirm that Extreme Lacked an**
 9 **Integration Plan and Had Severe Integration Problems**

10 The AC alleges new, post-Class Period admissions and events that support the falsity of
 11 Class Period statements. *Hatamian*, 87 F. Supp. 3d at 1160 (“later admissions” supported falsity
 12 of statements that “issues were *not ‘behind’ the Company*” when made). *See also Public*
 13 *Pension Fund Grp. v. KV Pharm. Co.*, 679 F.3d 972, 981 (8th Cir. 2012) (“*post-class-period* data
 14 ... can be used to confirm what a defendant should have known during the class period”).

15 On 9/14/16, when Extreme announced its acquisition of Zebra Technologies, Meyercord
 16 confirmed the CWs’ statements that the Enterasys deal lacked an integration plan. He admitted
 17 that “[t]here were a lot of integration issues” with Enterasys, and assured that the Zebra
 18 integration would be “[v]ery different” because, unlike with Enterasys, “a lot of work has gone
 19 into planning” it. ¶160. This new deal had “very extensive and detailed bottoms-up plans,”
 20 including “*integration planning*,” such as a “*very clean and clear product and technology*
 21 *roadmap*.” *Id.* Such “later statement[s]” support falsity and scienter as they “directly contradict[]
 22 or [are] inconsistent with” Defendants’ earlier statements implying the existence of an
 23 integration plan. *In re Read-Rite Corp. Sec. Litig.*, 335 F.3d 843, 846 (9th Cir. 2003). Defendants
 24 respond only that Enterasys was “a merger in which Extreme had acquired a business larger than
 25 itself” while Zebra was a “clean asset purchase.” MTD at 19; ¶160. But this does not dispute
 26 Meyercord’s statements admitting that the Enterasys deal lacked integration planning.

27 Further, on 5/20-5/21/15, just 5 weeks after the Class Period, Extreme announced a “*new*
 28 operating plan,” including an 18% workforce reduction and “other operating cost reductions” to

1 achieve \$40 million in cost savings. ¶¶155-156. As part of this new plan, it also announced a
 2 “*new* solutions-based go-to-market strategy,” which it only started to develop in January 2015.
 3 ¶157. These announcements confirm the CWs’ accounts that such plans did not exist before.

4 Indeed, the 18% workforce reduction was equal to “approximately 300 employees
 5 worldwide,” confirming that Extreme had been employing about 1,666 people, which was
 6 substantially identical to the 1,650 employees it had at the beginning of the integration in late
 7 2013. ¶156. Defendants assert that “Plaintiffs do not allege a factual basis for” 1,650 employees.
 8 MTD at 12. To the contrary, Plaintiff alleged “Extreme had approximately 750 employees” and
 9 “Enterasys had approximately 900 employees.” ¶51. Defendants proffer a number higher by 100,
 10 but the fault for any discrepancy lies with them: on 9/12/13, they disclosed both that Enterasys
 11 had “approximately 900 employees” (Austin 2:5), and that it had “nearly 1,000.” Austin 3:3.

12 (b) **Statements that the Integration Was “Complete” and the**
 13 **Problems Were “Behind” Extreme Were False and Misleading**

14 On 8/14/14, Berger assured that “our sales force integration is complete” and Arola stated
 15 that they had “fully integrated [the] sales and marketing teams.” ¶¶235, 254. These statements
 16 were false and misleading because Berger admitted two months later, on 10/15/14, that the
 17 salesforce integration was only “*nearly* completed,” and thus could not have been complete on
 18 August 14. ¶142. This revelation caused the Company’s stock to drop 18%. ¶61. **Defendants**
 19 ***ignore this admission.*** See MTD at 15. Likewise, Arola’s 12/17/14 statement that the “two
 20 [sales] teams have been integrated” and “integration of sales is completed” (¶291) is ***directly***
 21 ***contradicted*** by Berger’s 1/28/15 admission that the salesforce integration was ***still*** not complete
 22 at that time. ¶143 (“[W]e still have considerable work to do” on the integration). Arola’s
 23 purported disclosure of integration efforts (*e.g.*, that “there was ‘***probably some*** areas to continue
 24 to ***fine-tune*** in the sales group,’” MTD at 16) is another example of Defendants minimizing
 25 rather than fully disclosing Extreme’s integration problems.

26 Defendants argue that ongoing salesforce integration problems do not mean the
 27 integration was incomplete. MTD at 14-15. But Berger himself admitted that the integration was
 28 not complete as of 1/28/15 because of the “considerable work” that remained on the “integration

1 and upgrading of our salesforce.” ¶¶142-143. Moreover, Arola’s assurance of “full” integration
 2 created the misleading impression that no material problems remained with the salesforce
 3 integration and that it was “aligned and executing” well, as Berger stated. ¶235. *See In re Cooper*
 4 *Sec. Litig.*, 691 F. Supp. 2d 1105, 1117-18 (C.D. Cal. 2010) (statements that “the *integration was*
 5 *complete*,” and that the two salesforces were “*fully integrated*,” “appear[] to conflict with the
 6 reports [] by the employees who were on-the-ground,” which showed integration problems
 7 indicating they were not functioning as a united team).

8 Such statements are also false and misleading because the CWs described continuing
 9 salesforce integration problems after this date. ¶¶118-131. Indeed, per CW3, Extreme hired
 10 White in October 2014 to fix these problems, yet they were not fixed as of White’s departure on
 11 April 9, 2015. ¶¶112, 141, 144. *Contra* Order at 28 (“[T]here is no claim that the two companies
 12 were not fully integrated.”). Defendants’ attempt to minimize White’s statements as his
 13 “opinion” (MTD at 15) fails. He was hired to head the salesforce and fix its integration problems
 14 (¶¶141, 144), and his “negative assessment” of it (MTD at 15) thus is highly relevant.

15 Arola’s other alleged misstatement on 8/14/14, that Extreme had “*integrated [the]*
 16 *product portfolio[s]’* of the two companies (¶254), was false and misleading because Extreme
 17 had not yet done so, as revealed by the CWs’ statements that Extreme lacked a combined product
 18 roadmap throughout the Class Period, including at the time of its global sales conference in Las
 19 Vegas, held *just two weeks before* this statement (¶255).

20 Further, Berger’s statements on 8/14/14 that “virtually all of these issues *are behind us*”
 21 and on 10/28/14 that “for the most part, these disruptions *are now fully behind us*” are false and
 22 misleading for the same reasons. Defendants’ emphasis on the word “virtually” as “impl[y]ing
 23 that some issues remained” (MTD at 15) is an unreasonable interpretation of Berger’s full
 24 statement, which creates the false impression that all material issues already had been resolved.
 25 ¶279. In fact, Defendants ignore that at the end of that same passage, Berger referenced “added
 26 signs that the integration issues *are behind us*,” without any such caveat. ¶258. Significantly,
 27 when Defendants tout Berger’s “disclosure chronology” on 10/28/14, they quote his statement
 28 that “virtually every part of our business” was “disrupted in a significant way during the quarter”

(MTD at 22), but conspicuously omit his false reassurance in the very next sentence that “*these disruptions are now fully behind us.*” ¶279.

(c) Defendants’ Integration “Risk” Disclosures Do Not Shield Them Under the Safe Harbor or Bespeaks Caution Doctrine

Defendants concede that none of the integration statements were forward-looking. MTD at 7 (challenging only one Lenovo statement as forward-looking); *see* ¶¶180, 197, 209, 213, 227, 235, 240, 245, 250, 254, 258, 267, 274, 279, 284, 291, 296. Even their statements regarding their “plans” to achieve \$30-40 million in synergies (¶¶165, 185) represented that they had an existing “plan.” *See Quality Sys.*, 865 F.3d at 1141-42 (“mixed” statements are not shielded by safe harbor). The PSLRA safe harbor and bespeaks caution doctrine thus offer no defense. *See* Order at 20, n.3 (finding “on track” and similar statements are not forward-looking and declining to address safe harbor); *Livid Holdings Ltd. v. Salomon Smith Barney Inc.*, 416 F.3d 940, 947-48 (9th Cir. 2005) (bespeaks caution defense applies only to forward-looking statements). Thus, Defendants’ argument about Extreme’s integration “risk” warnings is a red herring. MTD at 10.

Nor do any of Defendants’ risk warnings satisfy the “stringent” standard for what qualifies as meaningful cautionary language. *Livid*, 416 F.3d at 947. Their risk disclosures were boilerplate and warned of potential future risks, rather than disclosing known problems that already existed. *Berson*, 527 F.3d at 987; *Tracinda Corp. v. DaimlerChrysler AG*, 197 F. Supp. 2d 42, 75-77 (D. Del. 2002) (similar cautionary language about “integration” and “synergies” risks insufficient). Likewise, Defendants’ argument that they added “new risk factors regarding the merger” on 5/6/14 (MTD at 20) is irrelevant because the language used also was too general, and no forward-looking statements about the integration were made after this date.

(d) Defendants’ Truth-on-the-Market Defense Fails

Defendants’ recurrent argument that their public disclosures preclude liability is the truth-on-the-market defense. *See Conn. Ret. Plans & Tr. Funds v. Amgen Inc.*, 660 F.3d 1170, 1174 (9th Cir. 2011), *aff’d*, 568 U.S. 455 (2013) (“[a] showing that the market was already aware of the truth behind the defendant’s supposed falsehoods ... [is] the so-called ‘truth-on-the-market’ defense”); *Nguyen v. Radiant Pharm. Corp.*, 946 F. Supp. 2d 1025, 1035 (C.D. Cal. 2013)

(arguing statements “were not misleading *in light of other statements Defendants made* is an attempt to argue the affirmative defense of truth-on-the-market”). Defendants must prove that the truth “was transmitted to the public *with a degree of intensity and credibility sufficient to effectively counterbalance any misleading impression* created by ... [the] representations.” *Provenz v. Miller*, 102 F.3d 1478, 1492-93 (9th Cir. 1996). They do not meet their “heavy burden” here. *Id.* For every integration issue disclosed (§§424-427), they continued to conceal the material, adverse facts reported by the CWs and to falsely reassure investors, *e.g.*, that the integration was still “on track,” (§§197, 213) and “ahead of plan” (§§209, 227) and that any integration issues were now “behind us” (§§258, 279). *See S. Ferry LP # 2 v. Killinger*, 399 F. Supp. 2d 1121, 1138 (W.D. Wash. 2005), *vacated in part on other grounds*, 542 F.3d 776 (9th Cir. 2008) (statements about “progress ... *integrating*” materially misleading as “Defendant [] disclosed ... challenges” but “reassured investors that ‘we ... *are back on track*’”).

Plaintiff’s allegations that the truth was revealed in four partial disclosures do not “admit” that Defendants made sufficient disclosures. Order at 30; MTD at 23. “[C]orrective information sometimes comes to the market slowly” through “partial disclosures [which] may not contain enough information to significantly undermine a misrepresentation,” particularly where, as here, defendants’ “corrective disclosures were made over an extended period of time *and often in combination with alleged further misrepresentations.*” *In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1200, 1160 (C.D. Cal. 2008). Moreover, analysts’ reactions confirm that the market was reassured by Defendants’ misstatements. *E.g.*, §202 (2/6/14 report: “*no change to the story and the company remains on track*”); §272 (10/16/14 report: “the integration sales channel and management issues ... are mostly *behind the company*”); §§203, 225-26, 233-34, 263-64, 273, 289. Thus, the full truth did not reach the market with sufficient “intensity and credibility.” *Provenz*, 102 F.3d at 1492-93.

While the MTD does not appear to challenge loss causation, it argues that “Plaintiffs’ characterization of February 5 as a ‘corrective disclosure’ is baseless.” MTD at 20. Defendants, however, take issue with the wrong part of the February 5 disclosure. *See* §§195-96 (“self-imposed” integration “issues” and absence of “revenue due to synergies” were corrective, to

1 explain why Extreme’s Q3-14 guidance was “at the low end” and missed analysts’ consensus
 2 estimates); ¶¶202-203 (analysts reacting to the same); *see also* ¶424. These disclosures bear a
 3 sufficient “causal connection” to prior integration and synergies misstatements. *Lloyd v. CVB*
 4 *Fin. Corp.*, 811 F.3d 1200, 1211 (9th Cir. 2016). Further, these disclosures were themselves
 5 misstatements and material omissions and thus insufficient to negate scienter, thus distinguishing
 6 Defendants’ authorities (MTD at 23), including this Court’s decision in *Jasin v. Vivus, Inc.*, 2016
 7 WL 1570164, at *22 (N.D. Cal. Apr. 19, 2016) (noting “the *thoroughness* of [defendants’] risk
 8 disclosures”). *See also SEC v. Mozilo*, 2010 WL 3656068, at *19 (C.D. Cal. Sept. 16, 2010)
 9 (defendants’ disclosures “are certainly not sufficient to entirely negate” scienter, especially
 10 where “the disclosures were incomplete [and] interspersed with misleading statements”).

11 **2. Defendants Misrepresented Extreme’s Partnership with Lenovo**

12 **(a) Berger’s 10/28/14 Opinion Statement About Lenovo**

13 Berger promised on 10/28/14 that “Lenovo *certainly* by then [June 2015] we believe will
 14 have double-digit revenue impact.” ¶322. Defendants assert “parts of the AC” omit “we believe”
 15 to characterize Berger’s statement as a “guarantee” rather than an opinion. MTD at 6. But the AC
 16 quotes the full statement multiple times, including “we believe.” ¶¶72, 322, App’x A at 5.

17 Indeed, the AC pled the statement as an “opinion,” misleading in that “it lacked a
 18 reasonable basis” and omitted “facts which would conflict with what a reasonable investor would
 19 understand from the statement itself.” ¶324. Under *Omnicare*, an opinion is misleading if it
 20 “omits material facts about the issuer’s inquiry into or knowledge concerning a statement of
 21 opinion, and if those facts conflict with what a reasonable investor would take from the statement
 22 itself.” *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 135 S. Ct. 1318,
 23 1329 (2015). Meyercord admitted on 5/6/15 that Extreme had “*zero visibility into Lenovo*,” that
 24 he did not know “whether or not we’re collaborating in the field to get deals done with” Lenovo,
 25 and that he was “uncomfortable” making a “forecast” of revenue from Lenovo. ¶154. When
 26 Berger stated he believed Lenovo would “have double-digit revenue impact” “certainly by” June
 27 2015, only seven months prior, he omitted that Extreme had “zero visibility” into Lenovo’s
 28 ability to add revenue, notwithstanding any inquiry he may have conducted.

Defendants also argue that the AC must plead “actual knowledge” because this statement is forward-looking. MTD at 7. Meyercord’s admissions, however, are sufficient because they “conflict with what a reasonable investor would take from the statement itself.” *Omnicare*, 135 S. Ct. at 1329. The Court previously held that “Meyercord is not a defendant, and therefore, his statements cannot be deemed an admission of what Defendants knew at any time.” Order at 36. That the admission was made by Meyercord as CEO on behalf of the Company, rather than an Individual Defendant, does not undermine its relevance. *See In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1248, 1273-74 (N.D. Cal. 2000) (*new CEO’s* admissions of misconduct by terminated executives supported scienter). Meyercord was also Chairman of the Board during the entire Class Period and would have known of Lenovo’s ability to impact revenue all along.

(b) Remaining Lenovo Statements

The AC alleges three statements about Lenovo that make specific factual representations about positive interactions between Lenovo and Extreme sales personnel: (a) “We’ve [] trained all Lenovo North American reps” (¶307), (b) Extreme sat “side-by-side with [Lenovo] people in North America and China” (¶317), and (c) Extreme had “airtime with the legacy Lenovo salesforce” (¶330). These statements are undermined by Meyercord’s admissions on 5/6/15 that Extreme did not know “whether or not we’re collaborating in the field” with Lenovo and had “zero visibility into Lenovo.” ¶154. On 5/21/15, Meyercord further admitted that there was “nothing tangible” about the relationship. ¶158. These admissions, just weeks after the Class Period, support the inference that Defendants were not having productive meetings with Lenovo at the field level during the Class Period. *See Hatamian*, 87 F. Supp. 3d at 1160; *Novak*, 216 F.3d at 313 (that inventory was misdated “*six months after the Class Period* ... supports the inference that inventory during the Class Period was similarly [mis]dated”). This is corroborated by CW4’s statement (as director of two regions) that there was no “field level activity” between Extreme and Lenovo through February 2014, ¶149, and the account of CW7 (Account Executive for Lenovo, May 2013-January 2015) that there was “no mechanism in place” for Lenovo sales personnel to benefit from Extreme’s products—hence no reason to sell them (¶150).

3. Defendants Falsely Assured 10% Margin and Revenue Growth

Defendants falsely “reemphasize[d]” and “st[oo]d by” Extreme’s “commitment” to 10% revenue growth and profit margin by June 2015, highlighting their “conviction” and their “belief in our ability to achieve these goals [which] has only strengthened.” ¶341 (Berger on 5/10/14); ¶¶351, 356 (Berger and Arola on 10/28/14). The Court ruled that the word “commitment” does not “invoke[] surety.” Order at 24 (citing Webster’s Third New Int’l Dictionary, one definition of “commit” as “to pledge”); *but see* Webster’s Third New Int’l Dictionary (another definition of “commit” is “to obligate or bind”); *see also* Black’s Law Dictionary (10th ed. 2014) (defining “commitment” as “[a]n agreement,” “a promise,” or “[a]n obligation”). In context, these statements expressed “a certainty,” and are therefore actionable. *Omnicare*, 135 S. Ct. at 1326.

Defendants renew their argument that these statements are puffery, characterizing them as “management’s *personal* aspiration.” MTD at 16. Their position is not credible, as it cannot be doubted that Berger and Arola spoke on the Company’s behalf. And their commitments were “*capable of objective verification*” in setting a “standard against which a reasonable investor could expect them to be pegged”—a specific number (10%) by a specific deadline (June 2015). *Mulligan v. Impax Labs., Inc.*, 36 F. Supp. 3d 942, 966 (N.D. Cal. 2014); *see also* *Weiner v. Quaker Oats Co.*, 129 F.3d 310, 320 (3d Cir. 1997) (finding statement actionable because it provided “a specific figure regarding a particular, defined time period,” not because it used the term “confident,” as the Court believed (*see* Order at 24)).

Numerous courts hold strong commitments actionable. *In re Moody’s Corp. Sec. Litig.*, 599 F. Supp. 2d 493, 501, 509 (S.D.N.Y. 2009) (statement that company “remains *committed*” actionable where it “*also impl[ies] certainty*”); *Gammel v. Hewlett-Packard Co.*, 905 F. Supp. 2d 1052, 1070 (C.D. Cal. 2012) (“commitment” not puffery “when read in the context” of specific new products and plans). Here, Defendants reiterated their commitment amid emerging investor concerns, despite knowing that the integration and Lenovo alliance were “performing poorly.” *Quality Sys.*, 865 F.3d at 1143-44; *see also* *Warshaw*, 74 F.3d at 959-60 (“optimistic statements” actionable where designed to “reassure” investors); *In re Immucor, Inc. Sec. Litig.*, 2011 WL 2619092, at *3 (N.D. Ga. June 30, 2011) (same). Further, investors and analysts reacted

1 positively to the commitments, evidencing their materiality. *E.g.*, ¶¶347-50, 360-62.

2 Berger told investors that the basis for Extreme’s 10% commitments included the success
3 of the integration, its synergies, and the Lenovo partnership. ¶¶341, 351, 356. But he had “no
4 reasonable basis” to make this commitment while omitting the integration problems and lack of
5 field-level activity with Lenovo or visibility into the so-called Lenovo partnership. *Align*, 856
6 F.3d at 616. The statements were also misleading because they created the false impression that
7 the integration and Lenovo alliance were both going well enough to contribute to revenue growth
8 and profit by at least 10% by mid-2015. Thus, they “conflict with what a reasonable investor
9 would take from the statement itself.” *Omnicare*, 135 S. Ct. at 1329; *Align*, 856 F.3d at 615.

10 That Extreme one time “announced Q4 [20]14 revenues that exceeded the high end of its
11 May 6 guidance (\$156.9 million vs. \$145-\$150 million)” is no defense. MTD at 22. In fact, the
12 touted “\$145-\$150 million” guidance *was not the operative guidance*. Defendants revised it on
13 7/21/14 to “\$154 to \$156 million” (¶227); thus, they barely exceeded guidance. They also failed
14 to meet guidance not once (*see* MTD at 11) but twice: in Q1 2015 (¶¶265, 274) and in Q3 2015
15 (¶303). And when Extreme did meet guidance, their performance was nevertheless disappointing
16 to the market (*e.g.*, ¶¶195-96, 202, 204-07, 224, 226, 265-66, 272, 303-06), because the guidance
17 was “below the consensus estimates” (¶195) or achieved at the “low end” (¶¶195, 204). Far from
18 an “achievement” (MTD at 22), Extreme’s performance offered no basis for its commitment.

19 **C. The Complaint Pleads a Strong and Compelling Inference of Scienter**

20 **1. Plaintiff’s CW Allegations Support a Strong Inference of Scienter**

21 A complaint can establish a strong inference of scienter through CW accounts by
22 satisfying a two-part test: (1) the CW “must be described with sufficient particularity to establish
23 their reliability and personal knowledge;” (2) the CWs’ “statements ... must themselves be
24 indicative of scienter.” *Quality Sys.*, 865 F.3d at 1144-45. Here, the AC easily satisfies the first
25 prong (Part III.B.1.a.ii), and the amended CW accounts are strongly probative of scienter. Both
26 CW1 and CW3 “spoke directly to the CEO about the specific matters at issue,” which this Court
27 “agrees ... can carry extra weight.” Order at 36. Though the Court found “simply not enough”
28 details before, the AC provides more. CW1 spoke to Berger in April of 2014 about sales

1 personnel being integrated based on subjective, *ad hoc* factors rather than according to a plan,
 2 and its negative impact on customers and revenue. ¶122. Per CW1, Berger acknowledged that
 3 this integration was “unique” in this respect, creating problems atypical of other acquisitions. *Id.*

4 CW3 discussed the same salesforce integration problems, indicative of the lack of a
 5 salesforce integration plan, with Berger in two conversations in October and/or November of
 6 2014. ¶¶125-26. Further, ***CW3 repeatedly observed Berger admit***, at internal sales meetings and
 7 calls throughout the Class Period, that there was still no integration plan, including no combined
 8 product roadmap, no GTM strategy, and no synergies plan. ¶147. *See Quality Sys.*, 2017 WL
 9 3203558, at *10 (account of a CW who “was on a conference call during which [the defendant]
 10 stated” the relevant adverse fact was “indicative of scienter”). For example, right after the
 11 acquisition, which closed on 10/31/13 (¶4), Berger admitted in an internal quarterly sales call
 12 that “***we’re formulating the integration plan.***” ¶105. Thus, Berger knew or was deliberately
 13 reckless of the falsity of his 11/4/13 “on track” statement. ¶180.

14 CW3 also detailed how Berger (with Arola present) told the salesforce that the
 15 integration plan, including product roadmap and plan to achieve synergies, was still “***TBD***” on or
 16 about 7/31/14, at the global sales conference in Las Vegas. ¶¶104, 110. This newly pled fact
 17 shows that the “on track,” “ahead of plan” and similar misstatements on February 5, May 6, July
 18 21, and August 14, 2014 were knowingly false. ¶¶197, 208, 213, 227, 240, 245, 250.

19 Berger also knew of other integration problems, including how sales personnel were put
 20 in charge of unfamiliar products (¶¶120-122, per CW1) and clients (¶¶125-126, per CW3), which
 21 drove away customers. Such allegations show Berger’s knowledge of widespread salesforce
 22 integration problems through November of 2014, contrary to his statements on 8/14/14 that the
 23 “sales force integration is complete” (¶235), the “integration issues are behind us” (8/14/14,
 24 ¶258), and “disruptions are now fully behind us” (10/28/14, ¶279).

25 2. “Core Operations” Allegations Add to a Strong Inference of Scienter

26 “[K]nowledge of facts critical to a business’s ‘core operations’ ***or an important***
 27 ***transaction***” may be “impute[d] to a company’s key officers.” *Kovtun v. VIVUS, Inc.*, 2012 WL
 28 4477647, at *19 (N.D. Cal. Sept. 27, 2012). Core operations allegations establish scienter where

they: (1) “along with other allegations...raise a strong inference of scienter under the *Tellabs* standard;” (2) “independently satisfy the PSLRA” by suggesting “that defendants had actual access to the disputed information,” or (3) on their own show “that it would be absurd to suggest that management was without knowledge of the matter.” *Reese*, 747 F.3d at 575-76. Thus, knowledge that there was no plan, and of the resulting problems, can be imputed to Defendants.

(a) The Integration Was a Core Operation

The Enterasys deal was a “transformational” merger of equals, costing nearly half of Extreme’s market capitalization and *doubling the size and revenues* of the Company. ¶¶403-04. It was precisely the kind of critical transaction where the Individual Defendants, who “were directly responsible for [Extreme’s] day-to-day operations,” closely followed its integration and knew about the lack of an integration plan and resulting problems. *Berson*, 527 F.3d at 987-88 & n.5 (scienter pled solely via core operations given “the size of the contract and the prominence of the client”); *see also Anderson v. Peregrine Pharm. Inc.*, 2013 WL 4780059, at *12 (C.D. Cal. Aug. 23, 2013) (“The core operations doctrine applies ... to *transactions worth millions of dollars or that represent a significant portion of the company’s revenue.*”). Indeed, Defendants do not, and cannot, dispute that Enterasys was a core transaction for Extreme. MTD at 25. Courts often apply this doctrine in such cases. *See In re Huffly Corp. Sec. Litig.*, 577 F. Supp. 2d 968, 1000 (S.D. Ohio 2008); *In re Aetna Inc. Sec. Litig.*, 34 F. Supp. 2d 935, 953 (E.D. Pa. 1999).

(b) Defendants Were Closely Involved with the Integration

Berger also had “actual access” (*Reese*, 747 F.3d at 575-76) to adverse information. ¶¶405-11. He was acting Head of Sales May-October 2014 and thus had “direct responsibility” over the salesforce and its integration efforts; he admitted that “it is critical that I *stay close to our field organizations* particularly in North America.” ¶¶405-08. *Nursing Home Pension Fund, Local 144 v. Oracle Corp.*, 380 F.3d 1226, 1234 (9th Cir. 2004) (“specific admissions” about defendants’ “detail-oriented management style” bolstered scienter). *See also* ¶¶103-105, 110, 112-13, 405. Kurtzweil was “a major factor in driving most of the Enterasys integration.” ¶136.

Defendants’ disagreement (MTD at 25) ignores that “actual access” is an independent and non-exclusive way to infer scienter under core operations. *Robb v. Fitbit Inc.*, 2017 WL

219673, at *6 (N.D. Cal. Jan. 19, 2017). Even if not sufficient on their own, core operations allegations strengthen scienter when read with other allegations. *Id.*; *see also S. Ferry LP #2 v. Killinger*, 687 F. Supp. 2d 1248, 1258-60 (W.D. Wash. 2009) (same; CEO’s scienter pled under core operations where he assured that they “had successfully integrated [] recent acquisitions”).

3. Berger’s Motive Allegations Further Support Scienter

(a) Berger’s Highly Unusual Bonus Plan Incentivized Fraud

“[M]otive can be a relevant consideration, and personal financial gain may weigh *heavily* in favor of a scienter inference.” *Tellabs*, 551 U.S. at 325; *see also Howard v. Everex Sys. Inc.*, 228 F.3d 1057, 1064 (9th Cir. 2000) (motive “may [] be considered as circumstantial evidence of” scienter) (citing *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 977-79 (9th Cir. 1999)). Because the AC alleges Berger’s bonus plan together with other “red flags,” Defendants’ reliance on *Silicon Graphics* (MTD at 23) is misplaced. *Howard*, 228 F.3d at 1064.

Berger had a substantial and highly unusual incentive to inflate Extreme’s stock price: if he could get the stock price to rise from \$3.17 per share to \$4, \$5, and \$6, and stay there for only 30 days, he would earn a total bonus of 900,000 options. ¶¶372-73. By making misstatements in the fall of 2013, he inflated Extreme’s stock price to over \$8 per share, triggering this bonus, worth more than \$4.4 million – almost *nine times* his base salary. ¶¶397-400. Per the Order (at 40), the AC alleges with particularity that his plan was unique in Extreme’s history at the time—none of the four prior CEOs had one. ¶¶375-78; 385.

Further, the AC incorporates an expert opinion by Steven Hall, who has over 38 years of experience in executive compensation and conducted an empirical review of public data, which establishes that Berger’s incentive plan was also *highly unusual* across comparable companies. ¶¶379-96. *See Aldridge v. A.T. Cross Corp.*, 284 F.3d 72, 83 (1st Cir. 2002) (“When financial incentives ... go *far beyond the usual arrangements of compensation* ... they may be considered among other facts to show scienter.”) (cited with approval by *U.S. v. Goyal*, 629 F.3d 912, 919 (9th Cir. 2010)); *Oracle*, 380 F.3d at 1233 (relying in part on expert testimony alleged in complaint to find scienter pled). Specifically, Mr. Hall found that *none* of the 16 companies identified by Extreme as its peers in 2013 had such a stock price-tied bonus plan. ¶¶384(b); 386.

Further, fewer than 3% of CEOs at 412 companies with revenues between \$500 million and \$1 billion had a similar bonus plan. ¶¶384(c); 387.

(b) Defendants' Counterarguments Are Meritless

Defendants' sole attempt to dispute the unusualness of Berger's plan is to note that Meyercord got the same deal. MTD at 24. But this one *post hoc* example does not undermine the argument. Defendants' reliance on *In re Level 3 Commc'ns, Inc. Sec. Litig.*, 667 F.3d 1331, 1346 (10th Cir. 2012), MTD at 24, is also unavailing, as it involved only general allegations that defendants' equity grants were tied to the stock price, without specifying whether or how the plans were unusual. Pls. Ex. 4 (*Level 3 Complaint*) at ¶¶195-96. In contrast, the AC shows that Berger's plan was ***not at all*** "common among executives." *Level 3*, 667 F.3d at 1346.

Defendants' assertion that "Extreme's stock price had stagnated" before Berger's arrival and Extreme "wished to incentivize Berger well" in the merger (MTD at 24) misses the point. That Extreme may have had its reasons for giving Berger this package does not change that it created a major incentive for him to inflate its stock price "'to maximize [his] performance on that measure; ***no matter how.***" ¶¶393-94 & n.17 (quoting Dan Cable and Freek Vermeulen, *Stop Paying Executives for Performance*, Harvard Business Review, February 23, 2016).

Further, the Ninth Circuit has rejected Defendants' arguments regarding the AC's lack of allegations that "Berger exercised any options or sold any shares." MTD at 24. "[T]he lack of ***stock sales by a defendant is not dispositive as to scienter***" and does not render "illogical" motive allegations. *No. 84 Emp'r-Teamster Joint Council Pension Tr. Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 944-45 (9th Cir. 2003). Allegations that options were exercised are also not required. *Id.* (finding "***eligibility*** for stock options" sufficient to plead motive and scienter).

Defendants go outside the pleadings to assert that Berger's options expired. MTD at 24. This factual challenge is both improper on a motion to dismiss and appears incorrect (*see* Pls. Ex. 2 (later-filed SEC Form 4 listing "Expiration Date" for Berger's options from this bonus as "5/2/2020")). And it is irrelevant to his motive ***during*** the Class Period because it concerns what happened to his options ***afterward***. Berger earned these options on 12/16/13 (¶400), and they "would not expire for seven years after the grant date" (¶401). It incentivized him to inflate the

1 stock price (¶393) and try to maintain it while the options “vested incrementally over time”
 2 (MTD at 24). By the time many of his options had vested, Extreme’s stock price had already
 3 started dropping as the truth regarding the integration problems slowly emerged (starting on
 4 2/6/14). ¶¶20; 401. Thus, it is likely that Berger chose not to exercise them at those lower market
 5 prices, determined to try to get the price back up by falsely reassuring investors that the
 6 integration was going well. That his “gambl[e]” ultimately “did not pay off” does not invalidate
 7 his motive to lie in the first place. *Florida State Bd. Of Admin. v. Green Tree Fin. Corp.*, 270
 8 F.3d 645, 661–62 (8th Cir. 2001) (“Just as we cannot countenance pleading fraud by hindsight,
 9 neither can we infer innocence by hindsight because the alleged misdeeds did not pay off.”).

10 **4. Departures of Defendants and Key Executives Also Support Scienter**

11 Departures of Berger, Kurtzweil, and two other executives directly responsible for the
 12 salesforce integration (COO Crowell and CRO White) also bolster scienter. *See Zucco Partners,*
 13 *LLC v. Digimarc Corp.*, 552 F.3d 981, 1002 (9th Cir. 2009). Berger was hired to accomplish the
 14 Enterasys acquisition (¶99); it was the major initiative of his tenure, and he resigned just two
 15 weeks after the Class Period. ¶145. *See Bielousov v. GoPro, Inc.*, 2017 WL 3168522, at *7 (N.D.
 16 Cal. July 26, 2017) (scienter “bolstered” by “the resignation of [defendant] as GoPro’s
 17 president”). White was hired in the fall of 2014 to fix the continuing sales integration problems,
 18 and departed just six months later, unable to fix them. ¶¶141, 144; *see also* ¶¶305-06. Analysts
 19 knew Kurtzweil was “a major factor in driving most of the Enterasys integration” and linked his
 20 departure to integration problems. ¶136.⁶

21 **IV. CONCLUSION**

22 For these reasons, Defendants’ motion to dismiss should be denied in its entirety.

23 Dated: August 31, 2017

Respectfully submitted,

24 **LABATON SUCHAROW LLP**

25 By: /s/ Thomas A. Dubbs
 26 Thomas A. Dubbs

27 ⁶Because Plaintiff states a Section 10(b) claim, the Court should also sustain the Section 20(a)
 28 claims. *In re Intuitive Surgical Sec. Litig.*, 65 F. Supp. 3d 821, 839 (N.D. Cal. 2014).

CERTIFICATE OF SERVICE

I, the undersigned, state that I am employed in the City and County of New York, State of New York, that I am over the age of eighteen (18) years and not a party to the within action, that I am employed at Labaton Sucharow LLP, 140 Broadway, New York, New York 10005, and that on August 31, 2017, I caused to be served a copy of the attached:

**LEAD PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE
AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

to the parties through counsel who have appeared in this matter by the following means of service:

[X] BY E-FILE: I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record registered with the Court's electronic filing system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the 31st day of August, 2017.

By: /s/ Thomas A. Dubbs
Thomas A. Dubbs